IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/09/2002

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The Honourable Mr. Justice V.S. SIRPURKAR

W.P.No.2610 of 1995 and W.P.No. 2611 of 1995
and W.P.No. 2615 OF 1995

Chithra Rangachari
N. Selvasundari
S. Deivanayaki
D. Amirthapandian
S. Devadoss
J. Jayashree ..... Petitioners in W.P.Nos.2610 to 2615
ï of 1995 respectively

-Vs-

1. State of Tamil Nadu
rep. by Secretary to
Government, Housing and
Urban Development Dept.
Madras-9

2. The Tamil Nadu Housing Board
rep. by its Chairman
Madras-35

3. The Special Tahsildar-II
(L.A.), Tamil Nadu Housing
Board Scheme (New Ramavaram
Nandanam, Madras-35 ..... Respondents 1 to 3 in
all the above W.Ps

Petitions under Art.226 of the Constitution of India
for issue of a Writ of Mandamus as stated in
the petitions

For Petitioners :: Mr. Srinivasaraghavan

For Respondents :: Mrs. D. Malarvizhi, G.A.
for R1 and R3
No appearance for R2

:ORDER

Petitioners herein seek a Mandamus forbearing the respondents herein from acquiring the land in S.No.69/1A and 69/2B, Nesapakkam Village, Saidapet Taluk, Chengai-MGR District on the strength of the notification issued in G.O. Ms. No.412, Hou ban Development Department, dated 9-5-1975. The basis of their claim is that they became the owners of Plot Nos.15 to 18 (Extent 4615 and 4260 sq.ft. in S.No.69/1 and 69/2), Plot No.13 (Extent 2414 sq.ft. in S.No.69/1A), Plot No.14 (Extent 2201 sq.ft. i n S.No.69/1A and 69/2B), Plot No.5 (Extent 2263 sq.ft. in S.No.69/1A and 69/2B), Plot No.12 (Extent 2414 sq.ft. in S.No.69/1A) and Plot No.6 (Extent 1223 sq.ft. in S.No.69/2B) respectively. They further plead that the lands were covered to the extent of 37 cents in S. No.69/1A and 67 cents in S.No.69/2B referred to earlier. The lands were originally owned by one R. Kandasamy and thereafter the said lands were plotted out and sold to different buyers and petitioners being one of them.

2. Petitioners then refer to the Notification dated 11-6-1975 issued under Sec.4 of the Land Acquisition Act. They also refer to the subsequent notification issued on 9-6-1978 under Sec.6 of the said Act. They point out that R. Kandasamy a writ petition before this Court vide W.P. No.2338 of 1987 to quash the land acquisition proceedings and this Court, by its order dated 11-3-1987, granted stay of dispossession. Subsequently, the said writ petition was disposed of by the judgment dated 24-10-1991, following the order dated 8-10-1991, passed in W.P. No.3693 of 1996. The notification was thus quashed.

3. A statement has been made that there were no steps taken for acquisition of the land and no fresh notification was also issued. Petitioners then claim that taking advantage of the Tamil Nadu Housing Board Amendment Act, 1992 (T.N. Act 5 espondents are threatening to interfere with the possession of the petitioners on the assumption that the earlier notifications, which were already quashed, would be revived by reason of Act 5 of 1992. Petitioners, therefore, point out that since the ea rlier notification had already been quashed by this Court in W.P. No.2338 of 1987, there would be no question of revival of those notifications by the provisions of the Tamil Nadu Act 5 of 1992. It is, therefore, contended that the action on the part of the State Government is patently incorrect.
4. Learned counsel appearing for the petitioners says that there would be no question of reviving the notifications which were already finally quashed by the order of this Court which order had also become final.

5. Learned Government Advocate, however, points out that there is a judgment reported in 1994 W.L.R. 748 (N.D. Rangan and others v. State of Tamil Nadu and others) which has taken a view that the Tamil Nadu Housing Board Amendment Act, 1992 5/92) was held to be valid by the Division Bench judgment of this Court. Under the said Act, it is obvious that the earlier notifications issued under the Land Acquisition Act were revived. Learned Government Advocate points out that the Tamil Nadu Act 5/1992 would have the effect of reviving the earlier land acquisition notifications.

6. Learned counsel for the petitioners, however, points out that in this case the judgment in the earlier writ petition had become final

since it was not challenged. My attention was invited to paragraphs 38 and 44 of the said judgment, w under:

"38. The only limitation on the power of the Legislature is that by such a retrospective legislation, as individual decision inter partes cannot be affected. In other words, the respondents cannot by virtue of the Amendment Act contend that the N ication in G.O.Ms.No.847, Housing and Urban Development,dated 31-5-1983 by which the lands of Mohammed Yosuf in R.S. No.543/3, Village Road, Nungambakkam, Madras were sought to be acquired has become valid. If there is any other case in which a similar Notification has been quashed and the judgment of the Court had become final before the Amendment Act, the same principle will apply. But none of the petitioners before us has claimed the benefit of the aforesaid exception and contended that the validat ion provision is not applicable to them. Hence, we reject this contention of the petitioner.
44. In any event, we do not want to conclude that issue here. If there is an appeal against W.P. No.13577 of 1989, the Bench which hears the same may consider the said question, if raised by the petitioner. If there is no appeal against the judgm in that writ petition, and it has become final, the petitioner will have the benefit of it notwithstanding the Amendment Act as already pointed out by us in paragraph 38 supra."
From this, learned counsel points out that even the Division Bench of this Court had held that where the judgment quashing the notification had become final then, the amendment Act would not have the effect of reviving those notifications which were alre ady quashed. Learned Government Advocate points that the aforementioned judgment in W.P.2338 of 1987 had not become final inasmuch as a writ appeal (W.A. SR. No.14998 of 1992 and c.M.P. No.13350 of 1993) was filed against the same and is still pending. From this the learned Government Advocate points out that the judgment could not be said to have become final with the result that the Division Bench judgment which has held that the Tamil Nadu Act 5 of 1992 was validly passed and had the effect of revi ving the earlier notifications would hold the field. Therefore, the position is obtained that the notifications which were quashed would stand revived because of the Tamil Nadu Act 5 of 1992. If that is so then, the petitions must fail as because of th e revival of the notifications, the State Government would have the necessary powers to acquire the lands. Writ petitions have no merits and they are dismissed but without any orders as to the costs. In the event the writ appeal, which is said to be pe nding, is allowed, petitioners may have the remedies available to them in law. Connected W.M.P. Nos.4163 to 4168 of 1995 are closed.

Index:Yes
Website:Yes
Jai
13-09-2002

To:

1. Secretary to Government
State of Tamil Nadu
Housing andUrban Development Dept.

Madras-9

2. The Chairman
The Tamil Nadu Housing Board
Madras-35

3. The Special Tahsildar-II
(L.A.), Tamil Nadu Housing Board
New Ramavaram Scheme
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